

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|-------------------------------|
| ANGEL MERCADO, | § | |
| | § | No. 652, 2015 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court of |
| | § | the State of Delaware |
| v. | § | |
| | § | Cr. ID No. 1411003995 |
| STATE OF DELAWARE, | § | |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: April 7, 2016

Decided: June 2, 2016

Before **HOLLAND, VALIHURA** and **VAUGHN**, Justices.

O R D E R

This 2nd day of June 2016, having considered the no-merit brief and motion to withdraw filed by the appellant’s counsel under Supreme Court Rule 26(c), the State’s response, and the Superior Court record, it appears to the Court that:

(1) On September 3, 2015, a Superior Court jury found the appellant, Angel Mercado, guilty of Driving under the Influence. After a presentence investigation, Mercado was sentenced, effective November 13, 2015, to two years at Level V incarceration, suspended after ninety days for one year at Level III probation. This is Mercado’s direct appeal.

(2) On appeal, Mercado’s trial counsel (“Counsel”) has filed a no-merit brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts

that, based upon a complete and careful examination of the record, there are no arguably appealable issues.

(3) Counsel informed Mercado of the provisions of Rule 26(c) and provided Mercado with a copy of the motion to withdraw and the accompanying brief and appendix in draft form. Counsel also informed Mercado of his right to identify any points he wished this Court to consider on appeal. Mercado has not raised any issues for this Court's consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that the appellant's counsel has made a conscientious examination of the record and the law for arguable claims.¹ Also, the Court must conduct its own review of the record and determine "whether the appeal is indeed so frivolous that it may be decided without an adversary presentation."²

(5) In this case, having conducted "a full examination of all the proceedings" and having found "no nonfrivolous issue for appeal,"³ the Court

¹ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

² *Penson v. Ohio*, 488 U.S. at 81.

³ *Id.* at 80.

concludes that Mercado’s appeal “is wholly without merit.”⁴ The Court is satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Mercado could not raise a meritorious claim on appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Karen L. Valihura
Justice

⁴ Del. Supr. Ct. R. 26(c).